

UNITED STATES OF AMERICA	D-082
v.	Defense Motion for Appropriate Relief: Disclosure of Interrogation Techniques Applied by the United States During Questioning of Ramzi bin al Shibh
KHALID SHEIKH MOHAMMED, WALID MUHAMMAD SALIH MUBARAK BIN 'ATTASH, RAMZI BIN AL SHIBH, ALI ABDUL-AZIZ ALI, MUSTAFA AHMED ADAM AL HAWSAWI	Ruling

1. Detailed military defense counsel for Mr. bin al Shibh move this Military Commission to compel the government to disclose the specific "enhanced interrogation techniques"¹ allegedly used on the accused by any U.S. government agency at any time, asserting such evidence is necessary in order to prepare for the Rule for Military Commission (RMC)909 incompetence determination hearing.² The government opposes the motion.

2. This Military Commission is tasked by the Supreme Court with balancing the government's "interest in protecting sources and

¹ Enhanced interrogation techniques (EITs), also referred to as "alternative procedures" and "harsh questioning", are terms used to describe interrogation methods allegedly used by various U.S. government agencies to extract information from some individuals captured in connection with the current overseas contingency operation.

² No person may be brought to trial by military commission if that person is mentally incompetent. Trial may proceed unless it is established by a preponderance of the evidence that the accused is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent

methods of intelligence gathering" against a detainee's need "to find out or present evidence to challenge the Government's case against him," *Boumediene v. Bush*, 128 S.Ct. 2229, 2269, 2276 (2008). The Military Commission finds the alternatives to full disclosure provided to the defense by the government, as approved by the military judge, along with witness testimony regarding post-interrogation observations of the effect of the techniques actually applied is sufficient to prepare for the narrow issue now before the Commission, the RMC 909 hearing to determine whether Mr. bin al Shibh is currently competent to stand trial by military commission.³ In other words, evidence of specific techniques employed by various governmental agencies to interrogate the accused is not sufficiently helpful or beneficial to the defense to overcome the classified information privilege and not essential to a fair resolution of the incompetence determination hearing in this case.

that he is unable to understand the nature of the proceedings or to conduct or cooperate intelligently in the defense of the case. See RMC 909(e).

³ The Military Commission further finds that there is no reasonable likelihood that the requested evidence will affect the judgment of the trier of fact on the narrow issue before it, the accused's mental competency to stand trial. See, e.g., *United States v. Valenzuela-Bernal*, 458 U.S. 858, 874 (1982).

3. The defense motion to compel disclosure of the specific interrogation techniques used or evidence of any coercive techniques applied during any interrogation of Mr. bin al Shibh, to include duration, sequencing, location, limitations, and timing of those techniques, if any, in order to prepare for the RMC 909 hearing is DENIED.

4. The Commission directs that a copy of this order be served upon the prosecution and all defense counsel of record, and that it be provided to the Clerk of Court for public release. The Commission further directs the Clerk of Court to have this order translated into Arabic and served upon each of the above named accused. The underlying defense motion and government response will also be provided to the Clerk of Court for public release, after appropriate redactions for privacy and security considerations.

So Ordered this 6th Day of August 2009:

/s/
Stephen R. Henley
Colonel, U.S. Army
Military Judge